

ESTTA Tracking number: **ESTTA162223**

Filing date: **09/12/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Build-A-Bear Workshop, Inc.
Granted to Date of previous extension	09/12/2007
Address	1954 Innerbelt Business Center Drive St. Louis, MO 63114-5760 UNITED STATES
Attorney information	Gary Pierson Blackwell Sanders LLP 720 Olive Street Suite 2400 St. Louis, MO 63101 UNITED STATES gpierson@blackwellsanders.com, jbirmingham@blackwellsanders.com, malvey@blackwellsanders.com Phone:314-345-6000

Applicant Information

Application No	78973975	Publication date	05/15/2007
Opposition Filing Date	09/12/2007	Opposition Period Ends	09/12/2007
Applicant	The Heart Stuff LLC 3636 Francis Ave N # 203 Seattle, WA 98103 UNITED STATES		

Goods/Services Affected by Opposition

Class 016. First Use: 2006/07/20 First Use In Commerce: 2006/07/20
All goods and services in the class are opposed, namely: Booklets in the field of smoking cessation; Business cards; Flash cards; Greeting cards; Journals concerning smoking cessation; Motivational cards; Occasion cards; Workbooks directed to people quitting smoking

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2399648	Application Date	07/01/1999
Registration Date	10/31/2000	Foreign Priority Date	NONE
Word Mark	HEART STUFF		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 1998/08/01 First Use In Commerce: 1998/08/01 Mail order, retail store, and mail order catalog services, all featuring stuffed toy animals and plush toy animals, dolls and accessories therefor; compact disks, audio cassettes, jewelry, books, newsletters, magazines, pamphlets, and brochures for children, books, newsletters, magazines and brochures relating to stuffed and plush toy animals and dolls, greeting cards, stickers, invitations, carrying cases for plush toy animals, stuffed toy animals and accessories therefor, ceramic figurines, metal and non-metal keychains and novelty buttons, clothing, toys and board games, candy

U.S. Application No.	77081099	Application Date	01/11/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HEART STUFF		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: Electronic sound device containing a recorded heart beat sound for placement inside a stuffed or plush toy animal or doll		

Attachments	75744567#TMSN.gif (1 page)(bytes) 77081099#TMSN.jpeg (1 page)(bytes) heartstuff.pdf (4 pages)(212001 bytes)
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Signature	/Gary Pierson/
Name	Gary Pierson
Date	09/12/2007

Notice of Opposition
Application Serial No. 78/973,975
Build-A-Bear Retail Management, Inc.
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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals on September 12, 2007.

/s/Gary A. Pierson

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 78/973,975

BUILD-A-BEAR RETAIL)	
MANAGEMENT, INC. and)	
BUILD-A-BEAR WORKSHOP, INC.)	
)	
Opposers,)	
)	
v.)	Opposition No.
)	
THE HEART STUFF, LLC)	
)	
Applicant.)	

Box TTAB FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

NOTICE OF OPPOSITION

Build-A-Bear Retail Management, Inc. ("BABRM"), a Delaware corporation, with a place of business at 1954 Innerbelt Business Center Drive, St. Louis, Missouri 63114, and Build-A-Bear Workshop, Inc. ("BABW"), a Delaware corporation, with a place of business at 1954 Innerbelt Business Center Drive, St. Louis, Missouri 63114, (collectively "Opposers"), believe they will be damaged by the use and/or registration of THE HEART STUFF and Design as shown in Serial No. 78/973,975 and hereby oppose same.

As grounds for opposition, Opposers states:

1. Applicant applied for registration of THE HEART STUFF and Design in connection with booklets in the field of smoking cessation, business cards, flash cards, greeting cards, journals concerning smoking cessation, motivational cards, occasion cards, workbooks directed to people quitting smoking, by an application filed September 13, 2006. This application was based on an allegation of use in commerce of the mark THE HEART STUFF and Design since July 20, 2006.

2. Opposer BABRM is a wholly-owned subsidiary of Opposer BABW. Opposer BABW requested and received an extension of time to oppose Application Serial No. 78/973,975 on June 4, 2007.

3. Since long prior to Applicant's filing date, Opposers (and/or their predecessors in interest) have used their HEART STUFF and HEART STUFF and Design trademarks in commerce on or in connection with goods and services that are similar or identical to those covered by the application.

4. Opposers have promoted and continue to promote their marks in interstate commerce within the United States for identifying Opposers' goods and services, including, books, newsletters and greeting cards, among many other goods and services.

5. Opposer BABRM is the owner of numerous United States Trademark Registrations and Applications including those noted below:

Trademark	Ser. No. / Reg. No.	Full Goods/Services	Date of First Use
HEART STUFF and Design	Reg.No.:2,399,648	(Int'l Class: 35) Mail order, retail store, and mail order catalog services, all featuring stuffed toy animals and plush toy animals, dolls and accessories therefor; compact disks, audio cassettes, jewelry, books, newsletters, magazines, pamphlets, and	August 1, 1998

		brochures for children, books, newsletters, magazines and brochures relating to stuffed and plush toy animals and dolls, greeting cards, stickers, invitations, carrying cases for plush toy animals, stuffed toy animals and accessories therefore; ceramic figurines, metal and non-metal keychains and novelty buttons, clothing, toys and board games, candy.	
HEART STUFF	App. Ser. No. 77/081,099	(Int'l Class: 39) Electronic sound device containing a recorded heart beat sound for placement inside a stuffed or plush toy animal or doll.	Intent to use.

For purposes of this Notice, the foregoing trademarks of Opposers, including the U.S. trademark registration and application, will be referred to as the "HEART STUFF Marks."

5. Opposers' HEART STUFF Marks are distinctive, and are uniquely associated with Opposers in connection with Opposers' goods and services, by reason of Opposers' continuous use and promotion of its marks and family of marks through extensive advertising, promotion and use. Such advertising, promotion, and use occurred prior to Applicant's filing date.

6. The application for THE HEART STUFF and Design herein opposed, so resembles Opposers' HEART STUFF Marks as to be likely, when used in conjunction with Applicant's goods, to cause confusion, and mistake, and to deceive consumers; and THE HEART STUFF and Design is confusingly and deceptively similar to Opposers' HEART STUFF Marks when used in connection with Applicant's goods and/or services.

7. Applicant's goods are directed to the same or related class of consumers as those for Opposers' goods and are sold in the same channels of trade. Accordingly, Applicant's goods

and Opposers' goods are so commercially related that the mark sought to be registered and Opposers' marks, when used in connection with their respective goods, are confusingly similar.

8. Applicant's use of its trademark, which so resembles and is colorably imitative of Opposers' marks, is likely to cause confusion, mistake, or deception of purchasers as to the source of Applicant's Goods and will inevitably falsely suggest a trade connection between Opposers and Applicant.

WHEREFORE, Opposers believe they would be damaged by the registration applied for and pray that said application be refused registration.

Opposers requests that the statutory filing fee of \$300.00 be debited from our Deposit Account no. 11-0160.

Respectfully submitted,

Date: September 12, 2007

By: /s/ Gary A. Pierson
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Alan S. Nemes
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ATTORNEYS FOR OPPOSERS